

1 John P. Kristensen (SBN 224132)  
 2 David L. Weisberg (SBN 211675)  
**KRISTENSEN WEISBERG, LLP**  
 3 12304 Santa Monica Boulevard, Suite 100  
 4 Los Angeles, California 90025  
 5 Telephone: 310-507-7924  
 6 Fax: 310-507-7906  
*john@kristensenlaw.com*  
*david@kristensenlaw.com*

7  
 8 Jarrett L. Ellzey (*Pro Hac Vice* pending)  
**HUGHES ELLZEY, LLP**  
 9 2700 Post Oak Boulevard, Suite 1120  
 10 Houston, Texas 77056  
 11 Telephone: (713) 554-2377  
 12 Fax: (888) 995-3335  
*jarrett@hugesellzey.com*

13 *Attorneys for Plaintiff and all others*  
 14 *similarly situated*

15 **THE UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**

17 NIKKI BELL, an individual, on  
 18 behalf of herself and all others  
 similarly situated,

19 Plaintiff,

20 vs.

21  
 22 DEPARTMENT STORES  
 23 NATIONAL BANK, a South Dakota  
 Entity; FDS BANK, an Ohio  
 24 Corporation; MACY's  
 INCORPORATED, an Ohio  
 Corporation; and DOES 1 through  
 25 50, inclusive, and each of them,

26 Defendants.

27 } Case No.:

28 } **CLASS ACTION**

} **PLAINTIFF'S COMPLAINT FOR**  
**DAMAGES AND INJUNCTIVE**  
**RELIEF**

29 } (1) Violations of the Telephone  
 Consumer Protection Act, 47  
 U.S.C. § 227, *et seq.*; and  
 30 } (2) Willful Violations of the  
 Telephone Consumer Protection  
 Act, 47 U.S.C. § 227, *et seq.*

31 } **DEMAND FOR JURY TRIAL**

32 } **CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**



1 Plaintiff Nikki Bell (“Plaintiff” or “Bell”), on behalf of herself and all  
 2 others similarly situated, alleges the follow upon information and belief based  
 3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff, on behalf of herself and others similarly situated, is  
 6 seeking damages and any other available legal or equitable remedies resulting  
 7 from the illegal actions of defendants DEPARTMENT STORES NATIONAL  
 8 BANK (“Defendant or “DSNB”) Defendants MACY’S INCORPORATED  
 9 (“Defendant” or “Macy’s”), FDS BANK (“Defendants or “FDS”), and  
 10 INDIVIDUAL DOES (collectively “Defendants”) in contacting Plaintiff, as well  
 11 as knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular  
 12 telephone in violation of the Telephone Consumer Protection Act, 47 U.S.C. §  
 13 227, *set seq.* (“TCPA”).

14 2. Defendants are companies that regularly engage in aggressive and  
 15 reckless debt collection practices which outright ignore controlling federal law,  
 16 and the rights of the called party.

17 3. Defendants repeatedly made unsolicited calls to Plaintiff’s cellular  
 18 telephone in violation of the TCPA. Defendants made the calls using an  
 19 automated telephone dialing system (“ATDS”) or pre-recorded voice for the  
 20 purpose of collecting a debt allegedly owed to Defendants by another individual.  
 21 Defendants repeatedly called Plaintiff, even after Plaintiff informed Defendants  
 22 that they had the wrong number, that Plaintiff was not the individual Defendants  
 23 were attempting to contact, and Plaintiff did not wish to be called again.

24 4. By making the telephone calls at issue in this Complaint,  
 25 Defendants’ caused Plaintiff actual harm, including the aggravation, nuisance,  
 26 and invasion of privacy that necessarily accompanies the receipt of unsolicited  
 27 and harassing telephone calls, as well as the monies paid to her carrier(s) for the  
 28 receipt of such telephone calls.



1       5.     Congress enacted the TCPA to protect consumers from unsolicited  
2     telephone calls exactly like those alleged in this case. In response to Defendants'  
3     unlawful conduct, Plaintiff files the instant lawsuit and seeks an injunction  
4     requiring Defendants to cease all illegal telephone calling activities to her  
5     cellular telephone and an award of statutory damages under the TCPA equal to  
6     \$500.00 per violation, together with court costs, reasonable attorneys' fees, and  
7     treble damages (for knowing and/or willful violations). Plaintiff also seeks an  
8     award of statutory damages under the FDCPA equal to \$1,000.00 per violation,  
9     together with court costs and reasonable attorney's fees.

## **JURISDICTION & VENUE**

1       6.     Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because the  
2 Plaintiff, a resident of California, seeks relief on behalf of a Class, which will  
3 result in at least one class member belonging to a different state than that of the  
4 Defendants, which are based in South Dakota and Ohio.

5       7. Plaintiff also seeks up to \$1,500.00 in damages for each call in  
6 violation of the TCPA, which, when aggregated among a proposed class in the  
7 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
8 Therefore, both diversity jurisdiction and the damages threshold under the Class  
9 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has  
0 jurisdiction.

1           8.     This Court has subject matter jurisdiction under 28 U.S.C. § 1331,  
2 as this action arises under the TCPA, which is a federal statute.

3       9. The Court has personal jurisdiction over Defendants because they  
4 conduct significant business in this District, and the unlawful conduct alleged in  
5 this Complaint occurred in, was directed to, and/or emanated from this District.

6           10.   Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)  
7 because the wrongful conduct giving rise to this case occurred in, was directed  
8 to, and/or emanated from this District.

1        11. Defendants are subject to specific personal jurisdiction in this  
2 District because they have continuous and systematic contacts with this District  
3 through their marketing efforts and services that target this District, and the  
4 exercise of personal jurisdiction over Defendants in this District does not offend  
5 traditional notions of fair play or substantial justice.

## **INTRA-DISTRICT ASSIGNMENT**

7       12. Pursuant to Local Rule 3.2(d), this action must be assigned to either  
8 the San Francisco Division or the Oakland Division of the United States District  
9 Court for the Northern District of California because Plaintiff Nikki Bell is a  
10 resident of Contra Costa County, California.

## PARTIES

12           13. Plaintiff NIKKI BELL (“Plaintiff”) is a citizen of the State of  
13 California who resides in Richmond, Contra Costa County, California.

14        14.    Defendant MACY'S INCORPORATED ("Defendant" or "Macy's")  
15 is a Delaware corporation organized under the laws of the State of Ohio.  
16        Defendant maintains its principle place of business in Cincinnati, Ohio, but  
17 regularly conducts business in this District. Defendant can be served with  
18 process by serving its registered agent, CSC – Lawyers Incorporating Service  
19 (Corporation Service Company), 50 West Broad Street, Suite 1800, Columbus,  
20 Ohio 43215.

21        15. Defendant DEPARTMENT STORES NATIONAL BANK  
22 (“Defendant” or “DSNB”) is a corporation organized under the laws of the State  
23 of South Dakota. Defendant maintains its principle place of business in Sioux  
24 Falls, South Dakota, but regularly conducts business in this District. Defendant  
25 can be served with process by serving its registered agent, Department Stores  
26 National Bank, P.O. Box 8066, Mason, OH 45040.

16. Defendant FDS BANK (“Defendant” or “FDS”) is a corporation  
organized under the laws of the State of Ohio. Defendant maintains its principle

1 place of business at 9111 Duke Boulevard, Suite 100, Mason Ohio, 45040 but  
 2 regularly conducts business in this District.

3       17. The true names and capacities of the Defendants sued herein as  
 4 DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore  
 5 sues such Defendants by fictitious names. Each of the Defendants designated  
 6 herein as a DOE is legally responsible for the unlawful acts alleged herein.  
 7 Plaintiff will seek leave of Court to amend the Complaint to reflect the true  
 8 names and capacities of the DOE Defendants when such identities become  
 9 known.

10       18. Plaintiff does not yet know the identity of Defendants' employees/agents, identified as DOE INDIVIDUALS that had direct, personal participation in or personally authorized the conduct found to have violated the statute, and were not merely tangentially involved. They are named tentatively as numerous District Courts have found that individual officers/principals of corporate entities may be personally liable (jointly and severally) under the TCPA if they had direct, personal participation in or personally authorized the conduct found to have violated the statute, and were not merely tangentially involved. *Texas v. American Blastfax, Inc.*, 164 F.Supp.2d 892, 899 (W.D. Tex. 2001) ("American Blastfax"); *Sandusky Wellness Center, LLC v. Wagner Wellness, Inc.*, 2014 WL 1333472, at \* 3 (N.D. Ohio March 28, 2014); *Maryland v. Universal Elections*, 787 F.Supp.2d 408, 415-16 (D.Md. 2011) ("Universal Elections"); *Baltimore-Washington Tel Co. v. Hot Leads Co.*, 584 F.Supp.2d 736, 745 (D.Md. 2008); *Covington & Burling v. Int'l Mktg. & Research, Inc.*, 2003 WL 21384825, at \*6 (D.C.Super Apr. 17, 2003); *Chapman v. Wagener Equities, Inc.* 2014 WL 540250, at \*16-17 (N.D.Ill. Feb. 11, 2014); *Versteeg v. Bennett, Deloney & Noyes, P.C.*, 775 F.Supp.2d 1316, 1321 (D.Wy.2011) ("Versteeg"). Upon learning of the identities of said individuals, Plaintiff will move to amend to name the individuals as defendants.



19. Plaintiff is informed and believes and thereon alleges that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was the owner, agent, servant, joint venturer and employee, each of the other and each was acting within the course and scope of its ownership, agency, service, joint venture and employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes and thereon alleges that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

20. At all times mentioned herein, each and every Defendant was the successor of the other and each assumes the responsibility for each other's acts and omissions.

## **TELEPHONE CONSUMER PROTECTION ACT**

21. Congress enacted the TCPA in 1991 to address certain practices thought to be an invasion of consumer privacy and a risk to public safety. The TCPA and the Federal Communications Commission’s (hereinafter “FCC”) implemented rules prohibit: (1) making telemarketing calls using an artificial or prerecorded voice to residential telephones without prior express consent; and (2) making any non-emergency call using an automatic telephone dialing system (hereinafter “ATDS”) or an artificial or prerecorded voice to a wireless telephone number without prior express consent. If the call includes or introduces an advertisement, or constitutes telemarketing, consent must be in writing.<sup>1</sup> The TCPA grants consumers a private right of action, with a provision for \$500 or the

<sup>1</sup> Prior express written consent means “an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered. 47 C.F.R. § 64.1200(f)(8).

1 actual monetary loss in damages for each violation, whichever is greater, and  
 2 treble damages for each willful or knowing violation, as well as injunctive relief.

3       22. Since the TCPA's passage in 1991, the FCC has taken multiple  
 4 actions implementing and interpreting the TCPA, and has issued numerous  
 5 Declaratory Rulings clarifying specific aspects of the TCPA. The most recent,  
 6 FCC Omnibus Order of July 10, 2015, (the "Order") provided further protection  
 7 to consumers by, among other things, clarifying that ATDS is broadly defined,  
 8 confirming liability attaches to calls made to the wrong number or reassigned  
 9 number, and clarifying consumers may revoke consent through reasonable  
 10 methods. *In the Matter of Rules and Regulations Implementing the Tel.*  
 11 *Consumer Prot. Act of 1991*, FCC 15-72, 30 F.C.C.R. 7961, (July 10, 2015),  
 12 available at <https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order>. The Order defines an "autodialer" as equipment/software that has the  
 13 future capacity to dial randomly or sequentially. "In other words, the capacity of  
 14 an autodialer is not limited to its current configuration but also includes its  
 15 potential functionalities." The Order clarifies the meaning of "capacity" and that  
 16 "any call" made using a device with the capacity to serve as an ATDS requires  
 17 consent under the TCPA, even if the caller is not "actually...using those  
 18 functionalities to place calls" at the time. *Derby v. AOL, Inc.*, No. 5:15-CV-  
 19 00452-RMW, 2015 WL 5316403, at \*3 (N.D. Cal. Sept. 11, 2015).

20       23. The Order also states that calls placed to the wrong number or a  
 21 reassigned number are made with knowledge of the error after the first call; and  
 22 consumers may revoke consent through any reasonable method, including orally:  
 23 "[w]e clarify, however, that callers who make calls without knowledge of  
 24 reassignment and with a reasonable basis to believe that they have valid consent  
 25 to make the call should be able to initiate one call after reassignment as an  
 26 additional opportunity to gain actual or constructive knowledge of the  
 27 reassignment and cease future calls to the new subscriber. If this one additional



1 call does not yield actual knowledge of reassignment, we deem the caller to have  
 2 constructive knowledge of such;” “[c]onsumers generally may revoke, for  
 3 example, by way of a consumer-initiated call, directly in response to a call  
 4 initiated or made by a caller, or at an in-store bill payment location, among other  
 5 possibilities.”

6       24. The repeated calls were asking for someone other than Plaintiff,  
 7 who told them repeatedly they had the wrong number, but Defendants refused.

8       25. Furthermore, the TCPA established the National Do-Not-Call List,  
 9 and also mandates all businesses that place calls for marketing purposes maintain  
 10 an “internal” do-not-call list (“IDNC”). See 47 C.F.R. § 64.1200(d). The IDNC  
 11 is “a list of persons who request not to receive telemarketing calls made by or on  
 12 behalf of that [seller].” *Id.* The TCPA prohibits a company from calling  
 13 individuals on its IDNC list or on the IDNC list of a seller on whose behalf the  
 14 telemarketer calls, even if those individuals’ phone numbers are not on the  
 15 National Do-Not-Call Registry. *Id.* at § 64.1200(d)(3), (6). Any company, or  
 16 someone on the company’s behalf, who calls a member of the company IDNC is  
 17 liable to that person under the TCPA. The called party is then entitled to bring a  
 18 private action under the TCPA for monetary and injunctive relief.

19       26. Finally, in 2008, the FCC held that “a creditor on whose behalf an  
 20 autodialed or prerecorded message call is made to a wireless number bears the  
 21 responsibility for any violation of the Commission’s rules.” *In re Rules and*  
 22 *Regulations Implementing the Telephone Consumer Protection Act, Declaratory*  
 23 *Ruling on Motion by ACA International for Reconsideration*, 23 FCC Rcd. 559,  
 24 565, ¶ 10 (Jan. 4, 2008); *Birchmeier v. Caribbean Cruise Line, Inc.*, 2012 WL  
 25 7062748 (Dec. 31, 2012).

26       27. Accordingly, the entity can be liable under the TCPA for a call  
 27 made on its behalf, even if the entity did not directly place the call. Under those  
 28 circumstances, the entity is deemed to have initiated the call through the person



1 or entity.

## 2 FACTUAL ALLEGATIONS

3 28. Beginning in or around January 2016, Defendant contacted Plaintiff  
 4 Bell on her cellular telephone number ending in 8454 *via* ATDS, as defined by  
 5 47 U.S.C. § 227(a)(1), at least fifty (50) times over a two-month period without  
 6 first obtaining Bell's written consent.

7 29. Bell's caller ID read "800-266-2278" as the calls were incoming.  
 8 This number is assigned to the Defendants and their agents.

9 30. Bell would answer some of the calls even though she had  
 10 memorized the number assigned to Defendants as a result of the constant abusive  
 11 calling techniques employed by Defendants. When Bell answered the phone, she  
 12 experienced dead air before she could hear the call being routed a live  
 13 representative.

14 31. To the extent Bell ever consented to the calls, she revoked such  
 15 consent but the calls continued.

16 32. Despite being informed by Bell that she was not the individual they  
 17 were attempting to contact, as well as several reasonable requests that  
 18 Defendants cease all further contact, Defendants called Bell at least thirty (30)  
 19 times.

20 33. Bell was extremely frustrated by the calls and wanted Defendants to  
 21 stop calling. The calls invaded her privacy and caused her to lose time on her  
 22 cellular plan.

23 34. On information and belief, Defendants' automated system had  
 24 called Bell on every occasion.

25 35. Based on the circumstances of the calls – including but not limited  
 26 to the multiple calls, Bell never spoke to the same representative, and Defendants  
 27 called despite Bell's requests to Defendants to stop calling (indicating a  
 28 computer automatically dialed the number again) – Bell believed Defendants



1 called her cellular telephone using an ATDS that automatically selected her  
 2 number from a computer database.

3       36. On information and belief, Defendants' ATDS called Bell on every  
 4 occasion.

5       37. On information and belief, and based on the circumstances of the all  
 6 the calls, Defendants called Bell using an ATDS.

7       38. The telephone number Defendants called was assigned to a cellular  
 8 telephone.

9       39. Bell is the regular carrier and exclusive user of the cellular  
 10 telephone assigned the number ending in 8454.

11       40. Defendants' calls constituted calls that were not for emergency  
 12 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

13       41. Bell did not provide Defendants with prior express written consent  
 14 to receive calls to her cellular telephone utilizing an ATDS or artificial or pre-  
 15 recorded voice, pursuant to 47 U.S.C. § 227 (b)(1)(A) and 47 C.F.R. §  
 16 64.1200(a)(3).

17       42. All calls Defendants made to Bell violate 47 U.S.C. § 227.

18       43. Bell seeks an injunction requiring Defendants to cease all illegal,  
 19 abusive, and harassing telephone calls using an ATDS and an award of statutory  
 20 damages, together with costs and reasonable attorneys' fees. This is necessary as  
 21 Defendants settled a prior class case, but continue their illegal activities.

## 22                   CLASS ALLEGATIONS

23       44. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules  
 24 of Civil Procedure and/or other applicable law, on behalf of herself and all others  
 25 similarly situated, as a member of the proposed class (hereafter "the Class")  
 26 defined as follows:

27       All persons within the United States who received any telephone calls  
 28 from Defendant(s) to said person's cellular telephone made through the



1 use of any automatic telephone dialing system or an artificial or  
 2 prerecorded voice and such person had not previously provided express  
 3 consent to receiving such calls from July 23, 2015 to the filing of this  
 4 Complaint.

5 45. Plaintiff represents, and is a member of the Class, consisting of All  
 6 persons within the United States who received any telephone call from  
 7 Defendant(s) to said person's cellular telephone made through the use of any  
 8 automatic telephone dialing system or an artificial or prerecorded voice and such  
 9 person had not previously not provided their cellular telephone number to  
 10 Defendant within the four years prior to the filing of this Complaint.

11 46. Excluded from the Class are governmental entities, Defendants, any  
 12 entity in which Defendants have a controlling interest, and Defendants' officers,  
 13 directors, affiliates, legal representatives, employees, co-conspirators, successors,  
 14 subsidiaries, and assigns. Also excluded from the Class are any judges, justices  
 15 or judicial officers presiding over this matter and the members of their immediate  
 16 families and judicial staff.

17 47. This action is properly maintainable as a class action. This action  
 18 satisfies the numerosity, typicality, adequacy, predominance and superiority for a  
 19 class action.

20 48. **Numerosity:** The proposed Class is so numerous that individual  
 21 joinder of all members is impracticable. Due to the nature of the trade and  
 22 commerce involved, Plaintiff does not know the number of members in the  
 23 Class, but believes the Class members number in the thousands, if not more.  
 24 Plaintiff alleges that the Class may be ascertained by the records maintained by  
 25 Defendants.

26 49. Plaintiff and members of the Class were harmed by the acts of  
 27 Defendant(s) in at least the following ways: Defendant(s) illegally contacted  
 28 Plaintiff and Class members via their cellular telephones thereby causing



1 Plaintiff and Class members, without their “prior express consent,” to incur  
 2 certain charges or reduced telephone time for which Plaintiff and Class members  
 3 had previously paid by having to retrieve or administer message(s) left by  
 4 Defendant during those illegal calls, and invading the privacy of said Plaintiff  
 5 and Class members.

6       **50. Common Questions of Law and Fact Predominate:** There are  
 7 only a few legal and factual issues to determine if there is liability under the  
 8 TCPA and for each of those questions of law and fact, common issues to the  
 9 Class predominate over any questions that may affect individual Class members,  
 10 in that the claims of all Class members for each of the claims herein can be  
 11 established with common proof. Common questions of fact and law include, but  
 12 are not limited to, the following:

- 13           (a) Whether, within the four years prior to the filing of this  
 14           Complaint, Defendant(s) made any calls (other than a call  
 15           made for emergency purposes or made with the prior express  
 16           consent of the called party) to a Class member using any  
 17           automated dialing system or an artificial or prerecorded voice  
 18           to any telephone number assigned to a cellular telephone  
 19           service;
- 20           (b) Whether Plaintiff and the Class members were damaged  
 21           thereby, and the extent of the statutory damages for each such  
 22           violation; and
- 23           (c) Whether the Defendant(s) should be enjoined from engaging  
 24           in such conduct in the future.

25       **51. Typicality:** Plaintiff’s claims are typical of the claims of members  
 26 of the Class, as Plaintiff was subject to the same common course of conduct by  
 27 Defendant(s) as all Class members. The injuries to each member of the Class  
 28 were caused directly by Defendant(s)’ wrongful conduct as alleged herein.



1           52. **Adequacy of Representation:** Plaintiff will fairly and adequately  
2 represent and protect the interests of the Class. Plaintiff has retained counsel with  
3 substantial experience in handling complex class action litigation. Plaintiff and  
4 his counsel are committed to prosecuting this action vigorously on behalf of the  
5 Class and have financial resources to do so.

6           53. **Superiority of Class Action:** A class action is superior to other  
7 available methods for the fair and efficient adjudication of the present  
8 controversy. Class members have little interest in individually controlling the  
9 prosecution of separate actions because the individual damage claims of each  
10 Class member are not substantial enough to warrant individual filings. In sum,  
11 for many, if not most, Class members, a class action is the only feasible  
12 mechanism that will allow them an opportunity for legal redress and justice.  
13 Plaintiff is unaware of any litigation concerning the present controversy already  
14 commenced by members of the Class. The conduct of this action as a class action  
15 in this forum, with respect to some or all of the issues presented herein, presents  
16 fewer management difficulties, conserves the resources of the parties and of the  
17 court system, and protects the rights of each Class member.

18           54. Moreover, individualized litigation would also present the potential  
19 for varying, inconsistent, or incompatible standards of conduct for Defendants,  
20 and would magnify the delay and expense to all parties and to the court system  
21 resulting from multiple trials of the same factual issues. The adjudication of  
22 individual Class members' claims would also, as a practical matter, be  
23 dispositive of the interests of other members not parties to the adjudication, and  
24 could substantially impair or impede the ability of other Class members to  
25 protect their interests.

26           55. Plaintiff and the members of the Class have suffered and will  
27 continue to suffer harm as a result of Defendant(s)' unlawful and wrongful  
28 conduct. Defendant(s) have acted, or refused to act, in respects generally



1 applicable to the Class, thereby making appropriate final and injunctive relief  
 2 with regard to the members of the Class as a whole.

3 **FIRST CAUSE OF ACTION**

4 **VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT,**

5 **47 U.S.C. § 227, *ET SEQ.***

6 **(By Plaintiff Against All Defendants)**

7 56. Plaintiff hereby incorporates by reference and re-alleges each and  
 8 every allegation set forth in each and every preceding paragraph of this  
 9 Complaint, as though fully set forth herein.

10 57. The foregoing acts and omissions of Defendants constitute  
 11 numerous and multiple violations of the TCPA, including but not limited to each  
 12 and every one of the above cited provisions of 47 U.S.C. § 227, *et seq.* and 47  
 13 C.F.R. §64.1200, *et seq.*

14 58. As a result of Defendants' violations of 47 U.S.C. § 227, *et seq.*, and  
 15 47 C.F.R. §64.1200, *et seq.*, Plaintiff is entitled to an award of \$500.00 in  
 16 statutory damages, for each and every violation, pursuant to 47 U.S.C. §  
 17 227(b)(3)(B).

18 59. Plaintiff is also entitled to and seeks injunctive relief prohibiting  
 19 such conduct in the future.

20 **SECOND CAUSE OF ACTION**

21 **KNOWING AND/OR WILLFUL VIOLATION OF**

22 **THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, *ET SEQ.***

23 **(By Plaintiff Against All Defendants)**

24 60. Plaintiff hereby incorporates by reference and re-allege each and  
 25 every allegation set forth in each and every preceding paragraph of this  
 26 Complaint, as though fully set forth herein.

27 61. The foregoing acts and omissions of Defendants constitute  
 28 numerous and multiple knowing and/or willful violations of the TCPA, including



1 but not limited to each and every one of the above cited provisions of 47 U.S.C.  
 2 § 227, *et seq.* and 47 C.F.R. §64.1200, *et seq.*

3 62. As a result of Defendants' violations of 47 U.S.C. § 227, *et seq.*, and  
 4 47 C.F.R. §64.1200, *et seq.* Plaintiff is entitled to an award of \$1,500.00 in  
 5 statutory damages, for each and every violation, pursuant to 47 U.S.C. §  
 6 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

7 63. Plaintiff is also entitled to and seeks injunctive relief prohibiting  
 8 such conduct in the future.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for  
 11 relief and judgment as follows:

12 1. An order certifying this action as a class action and appointing  
 13 Plaintiff and his counsel to represent the Class;

14 2. For the first cause of action:

- 15 • Plaintiff and Class members are entitled to and request \$500.00  
     in statutory damages, for each and every violation, pursuant to 47  
     U.S.C. § 227, *et seq.*;
- 16 • Preliminary and permanent injunctive relief enjoining  
     Defendant(s), their agents, servants and employees, and all  
     persons acting in concert with them, from engaging in, and  
     continuing to engage in, the unlawful calls made with automated  
     dialing systems to cellular phones without prior express consent;
- 17 • Attorneys' fees, costs and any and all other relief that the Court  
     deems just and proper.

18 3. For the second cause of action:

- 19 • Plaintiff and Class members are entitled to and request \$1,500.00  
     in statutory damages, for each and every violation, pursuant to 47  
     U.S.C. § 227, *et seq.*;



1                     • Preliminary and permanent injunctive relief enjoining  
2                     Defendant(s), their agents, servants and employees, and all  
3                     persons acting in concert with them, from engaging in, and  
4                     continuing to engage in, the unlawful calls made with automated  
5                     dialing systems to cellular phones without prior express consent;  
6                     • Attorneys' fees, costs and any and all other relief that the Court  
7                     deems just and proper.

8

9

10                   Dated: January 9, 2017

11                   Respectfully submitted,

12                   By: /s/ John P. Kristensen

13                   John P. Kristensen (SBN 224132)

14                   *john@kristensenlaw.com*

15                   David L. Weisberg (SBN 211675)

16                   *david@kristensenlaw.com*

17                   **KRISTENSEN WEISBERG, LLP**

18                   12304 Santa Monica Blvd., Suite 100

19                   Los Angeles, California 90025

20                   Telephone: (310) 507-7924

21                   Fax: (310) 507-7906



## **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury for all issues that may be decided by jury.

Dated: January 9, 2017

Respectfully submitted,

By: /s/ *John P. Kristensen*

John P. Kristensen (SBN 224132)

*john@kristensenlaw.com*

David L. Weisberg (SBN 211675)

*david@kristensenlaw.com*

# KRISTENSEN WEISBERG, LLP

12304 Santa Monica Blvd., Suite 100

Los Angeles, California 90021

Telephone: (310) 507-7924

Fax: (310) 507-7906

KRISTENSEN  
WEISBERG LLP  
Attorneys for Plaintiffs

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF